

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

KENNETH WIATRAC and RONA	:	
WIATRAC, <i>per quod</i>	:	
	:	
Plaintiffs,	:	CIVIL ACTION
	:	
vs.	:	NO.
	:	
NATCO HOME, FLEMISH MASTER WEAVERS	:	
BJ'S WHOLESALE CLUB HOLDINGS, INC.,	:	
ABC CORPORATIONS 1-10, ABC	:	
DISTRIBUTORS 1-10, ABC MANUFACTURERS	:	
1-10, DEF DESIGNERS 1-10, AND JOHN/JANE	:	
DOES 1-10,	:	
	:	
Defendants.	:	

**NOTICE FOR REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. §1441**

Defendant, BJ's Wholesale Club, Inc. (misnamed above, "BJ's Wholesale Club Holdings, Inc.") (hereinafter, the "Club"), hereby submits notice to the United States District Court for the District of New Jersey for the removal of the above entitled action to this Honorable Court and, in support thereof, respectfully represents:

1. The Club is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business located in the Commonwealth of Massachusetts.

2. Upon information, knowledge and belief, Plaintiffs, Kenneth Wiatrak (individually, "Plaintiff") and Rona Wiatrak (individually, "Plaintiff-wife") (collectively, "Plaintiffs"), are adult individuals and citizens and residents of the State of New Jersey, residing at 7 Navajo Avenue, Wayne, New Jersey.

3. Upon information, knowledge and belief, Defendant, NATCO Home (hereinafter "NATCO"), is a corporation organized and existing under the laws of the State of Delaware,

having its principal place of business located in the State of Rhode Island.

4. Upon information, knowledge and belief, Defendant, Flemish Master Weavers (hereinafter “Flemish”), is a corporation organized and existing under the laws of the State of Maine, having its principal place of business located in the State of Maine.

5. At all times material hereto, the Club was duly registered to do, and was doing, business in the State of New Jersey.

6. Upon information, knowledge and belief, at all times material hereto, Defendants, NATCO and Flemish, were also duly registered to do, and were doing, business in the State of New Jersey.

7. On or about March 10, 2020, Plaintiffs instituted the above action, by way of Complaint (the “Complaint”), a copy of which is attached hereto as Exhibit “A,” in the Superior Court of New Jersey, Passaic County, Docket No. PAS-L-000810-20, seeking damages for injuries Plaintiff allegedly sustained as a result of the Defendants’ alleged negligence.

8. Then, on or about September 4, 2020, Plaintiffs filed an Amended Complaint, a copy of which is attached hereto as Exhibit “B,” naming Home Dynamix as a defendant.¹

9. Upon information, knowledge and belief, Defendant, Home Dynamix is a limited liability company and has its principal place of business located in the State of New Jersey

10. At the time the action was filed, the Club did not have notice that the value of Plaintiffs’ claims exceeded Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of interest and costs.

11. On September 10, 2020, the Club filed an Answer and Defenses to Plaintiffs’

¹ Prior to September 4, 2020, Defendants did not have notice that Plaintiffs’ claimed damages exceeded \$75,000, exclusive of interest and costs. It was not until Plaintiffs responded to the Club’s request for admissions on January 13, 2021, as discussed below, that Defendants were first in receipt of “other paper” confirming the amount in controversy.

Amended Complaint, a copy of which is attached hereto as Exhibit "C," which included a Demand for Damages pursuant to N.J.R.Civ.P. 4:5-2.

12. To date, Plaintiffs have failed to respond to the Club's Demand for Damages.

13. Under cover letter dated July 7, 2020, the undersigned served upon Plaintiffs, by and through counsel, Request for Admissions, a copy of which is attached hereto as Exhibit "D"

14. The Request for Admissions requested that Plaintiffs admit or deny that their "claimed damages, if proven at trial, exceed \$75,000.00, exclusive of interest and costs." *See Exhibit "D."*

15. By letter dated July 29, 2020, a copy of which is attached hereto as Exhibit "E," counsel for Plaintiffs advised that their response to the Club's Requests for Admission was as follows: "Unknown at the present time as Plaintiff continues to treat."

16. Then, on January 13, 2021, counsel for Plaintiffs provided their responses to various discovery requests propounded by the Club, including a revised response to the Request for Admission.

17. According to Plaintiffs' revised response to the Club's Request for Admissions, a copy of which is attached hereto as Exhibit "F," they admitted that their claimed damages exceed \$75,000.00, exclusive of interest and costs.

18. On February 17, 2021, Defendant, Home Dynamix was dismissed from this matter pursuant to a jointly executed a Stipulation of Dismissal, a copy of which is attached hereto as Exhibit "G."

19. Until the recent dismissal of Defendant, Home Dynamix, diversity of citizenship did not exist as both Plaintiffs and Defendant, Home Dynamix, are citizens of the State of New Jersey.

20. However, diversity of citizenship now exists between Plaintiffs, citizens and

residents of the State of New Jersey, and the Defendants, whose various citizenship is as follows: the Club is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business located in the Commonwealth of Massachusetts; Defendant, NATCO, is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business located in the State of Rhode Island; and Defendant, Flemish, is a corporation organized and existing under the laws of the State of Maine and has its principal place of business located in the State of Maine.

21. Complete diversity of citizenship exists between the parties and removal is proper pursuant to 28 U.S.C. § 1441, *et seq.*

22. Said diversity of citizenship existed at the time Defendant, Home Dynamix, was dismissed and continues to at the time of the filing of this Notice. Therefore, as to said claims and causes of action, Defendants are entitled to removal pursuant to 28 U.S.C. §1441, *et seq.*

23. 28 U.S.C. §1446(b) reads, in pertinent part, that:

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 [diversity of citizenship] of this title more than 1 year after commencement of the action.

24. Plaintiffs' revised response to the Club's Request for Admissions constitutes "other paper" within the second paragraph of 28 U.S.C. §1446(b) to support removal.

25. This Notice of Removal is timely under 28 U.S.C. §1446(b) as it is filed within thirty (30) days after dismissal of the non-diverse Defendant, Home Dynamix, on February 17, 2021, which created diversity of citizenship in this matter. Moreover, this Notice of Removal is made within one (1) year after the filing of the Complaint on March 10, 2020.

26. Both NATCO and Flemish consent to the removal of the instant action to this Honorable Court.

WHEREFORE, the above action now pending against Defendants, BJ's Wholesale Club, Inc. (misnamed above, "BJ's Wholesale Club Holdings, Inc."), Natco Products and Flemish Master Weavers, in the Superior Court of New Jersey, Passaic County, is removed therefrom to this Honorable Court.

Respectfully submitted,

CHARTWELL LAW

Dated: March 1, 2021

BY: /s/ John M. Wutz
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